

**THE DEPARTMENT OF
GENERAL SERVICES**

FAMILY AND MEDICAL LEAVE ACT

AND

CALIFORNIA FAMILY RIGHTS ACT

FMLA/CFRA

POLICY AND PROCEDURES

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**Family and Medical Leave Act/California Family Rights Act
(FMLA/CFRA)**

INTRODUCTION

Definition of the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA)

FMLA is based on a Federal law and is administered by the U.S. Department of Labor (DOL), Employment Standards Administration, Wage and Hour Division. CFRA is a state law, which is administered by the Department of Fair Employment and Housing (DFEH). State legislation in 1993 changed the state law to generally conform to the provisions of the FMLA.

FMLA/CFRA does not supersede any memoranda of understanding that provides greater family or medical leave rights.

Benefit to employee

FMLA/CFRA authorizes an eligible employee to take up to a total of twelve (12) workweeks of paid or unpaid job-protected leave with employer-paid health, dental, and vision benefits during a "rolling" twelve (12)-month period for one or more of the following reasons:

Reasons for leave

- The birth of a child or adoption or foster care placement of a child.
- To care for an immediate family member (spouse, child or parent) with a serious health condition.
- When the employee is unable to work because of a serious health condition.

WHO IS ELIGIBLE FOR FMLA/CFRA LEAVE

Twelve months and 1250 hours requirements

1. An employee who has been employed for a total of at least twelve (12) months on the date on which any FMLA/CFRA leave is to commence, and
2. Who, on the date on which any FMLA/CFRA leave is to commence, has physically worked for at least 1,250 hours during the previous twelve (12)-month period. The hours need not be consecutive hours. Time off for sick leave, vacation/annual leave, administrative time off (ATO), compensating time off (CTO), holidays, informal time off (ITO) or personal leave (PL) are not to be counted toward the 1250 hours of work.

DEFINITIONS

Twelve (12) Workweeks and “rolling” twelve month

An FMLA/CFRA leave may be taken in one twelve (12) workweek period, or in increments of a tenth hour or more that total twelve (12) workweeks. The twelve (12) workweek period means 60 working days, or 480 hours, for most full-time employees. For eligible employees who work less than full-time, the number of working days is adjusted on a proportional basis. For example, for an employee who works half time, twelve (12) workweeks means thirty (30) full days or sixty (60) half days, or 240 hours.

A rolling twelve month period is measured backward from the date an employee uses any FMLA/CFRA leave. Each time an employee takes an FMLA/CFRA leave, the remaining leave entitlement is any balance of the twelve (12) workweeks that has not been used during the preceding twelve (12) months.

Health care provider

A doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices.

A podiatrist, dentist, clinical psychologist, optometrist or chiropractor (a chiropractor is limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law.

A nurse practitioner or nurse-midwife authorized to practice, and performing within the scope of their practice, as defined under state law.

A Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

A health care provider as defined above, who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.

Job protected leave

An employee returning to work from an FMLA/CFRA leave is entitled to be restored to the same position of employment (the one held by the employee when notice was given or the leave commenced) or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. An employee may be temporarily transferred to an available alternative position, for which he or she is qualified, that has equivalent pay and benefits, that better accommodates the employee's need to take intermittent leave or reduce his or her time base.

REASONS FOR FMLA/CFRA LEAVE

Birth/adoption/ foster care placement

1. **The birth of a child or adoption or foster care placement of a child.** FMLA/CFRA leave includes maternity and paternity leaves. This leave does not include pregnancy-related or childbirth-related disabilities. An employee who is **disabled** on account of pregnancy, childbirth, or related medical conditions is entitled to take Pregnancy Disability Leave (PDL) for the period of the actual disability of six (6) weeks up to four (4) months. An employee need not meet the eligibility requirements for FMLA/CFRA to be eligible for PDL. A pregnancy/childbirth-related disability leave **will be** deducted from an employee's FMLA (12) leave entitlement. The CFRA entitles employees to an additional twelve weeks of bonding leave. If an employee elects both PDL and FMLA/CFRA, the Department will only pay for its portion of the employee's health, dental, and vision benefits for twelve (12) weeks, no matter whether the employee is on PDL or FMLA/CFRA leave.

FMLA/CFRA leave is provided to either parent for birth, adoption, or foster placement of a child. Parents may be on leave simultaneously as long as there is a certification of the need for their care. The **minimum** duration of FMLA/CFRA leave taken because of the birth of the employee's child or the placement of a child with the employee for adoption or foster care is two (2) weeks. However, the Department will grant a request for FMLA/CFRA leave for these purposes of at least one day but less than two weeks' duration on any two occasions. Leave for childbirth or placement for adoption or foster care must conclude within twelve (12) months of the birth or placement.

Family member or employee with serious health condition

2. **To care for an immediate family member (spouse, child or parent) with a serious health condition.** A **spouse** is a husband or a wife as defined or recognized under state law. **Child** means a biological, adopted, or foster child, stepchild, legal ward, or a child of a person standing "in loco parentis" (in the place of a parent, or a parent's authority), who is under 18 years of age, or 18 years of age or older and incapable of self-care because of mental or physical disability. **Parent** is a biological or adoptive parent or a person who stood "in loco parentis" to an employee when the employee was a child. **Parent-in-law** does not qualify.
3. **The employee is unable to work** because of a serious health condition.

REASONS FOR FMLA/CFRA LEAVE (CONT.)

Serious health condition

A **serious health condition** means an illness, injury, impairment, or physical or mental condition. A serious health condition involves:

- Any period of incapacity or treatment in connection with, or consequent to, inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility.
- Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three consecutive calendar days, that involves continuing treatment by (or under the supervision of) a health care provider.
- Continuing treatment by or under the supervision of a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, or for prenatal care (other than routine medical appointments).
- Restorative dental or plastic surgery after an accident or injury, or the removal of cancerous growths are serious health conditions if all the conditions of this regulation (29 CFR 825.114) are met. Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Routine preventive physical examinations are excluded.

DEPARTMENTAL POLICY

Use of leave credits An eligible employee may use paid accrued leave; e.g., annual leave, personal leave, sick leave, and vacation, during a qualified FMLA/CFRA event. The Department **will** count this leave against the employee's twelve (12) workweek entitlement.

1. Sick leave may only be used in accordance with collective bargaining agreements and/or applicable civil service laws, rules, and policies. If a leave is FMLA/CFRA qualifying, no limitation will be placed on the employee's use of paid vacation, annual leave, or personal leave.
2. Paid/unpaid leave may be taken in one twelve (12) workweek period or in increments of a tenth of an hour or more. When a leave is taken for a medical or other FMLA/CFRA related appointment, the employee must make a reasonable effort to schedule the appointment at a time that minimizes disruption to the Department's operations.

DEPARTMENTAL POLICY (CONT.)

When medical information will be required

1. An eligible employee requesting **paid/unpaid** FMLA/CFRA leave because of the employee's own or a qualified relative's serious health condition must provide medical certification *FMLA/CFRA Med-Cert* (Appendix C) from his/her health provider. Until such certification is provided, leave will be provisionally counted as FMLA/CFRA leave. Failure to provide this certification within fifteen (15) days of the leave request may result in denial of the FMLA/CFRA leave.
2. The Department may, at its expense, obtain a second medical opinion of the employee's medical certification. If the first and second opinions differ, the Department may, at its expense, obtain a third opinion from a health care provider jointly selected by the employee and the Department. The third opinion is binding. Pending receipt of either the second or third opinions the employee will be provisionally entitled to the benefits of FMLA/CFRA. Upon request of the employee, the Department will furnish the employee with copies of any additional medical opinions. The Department will reimburse employees for out-of-pocket travel expenses incurred to obtain second or third opinions.
3. If an employee requests additional time beyond that which was originally estimated for the employee's FMLA/CFRA leave, re-certification may be required. Re-certification may also be required if the Department receives information that causes it to question the stated reason for the absence. Failure to submit required re-certification may result in termination of the leave. No second or third opinions will be allowed on re-certifications.
4. When the employee returns to work at the conclusion of FMLA/CFRA leave taken for their own serious illness, they will be required to furnish their supervisor with a note from their health care provider releasing the employee to work. No second or third opinions will be allowed on releases to return to work. However, a health care provider employed by the Department may contact the employee's health care provider, with the employee's permission, for purposes of clarification of the employee's fitness to return to work. The employee's return to work will not be delayed by this contact.

DEPARTMENTAL POLICY (CONT.)

Periodic reporting of condition

Employees whose FMLA/CFRA leave does not have a stated amount of time may be asked to periodically report on their status and intent to return to work. "Periodically" is defined as no more than every thirty (30) days.

Sick leave restriction

No absence that qualifies as FMLA/CFRA leave will be counted against any employee for purposes of determining excess sick leave usage. If a leave is FMLA/CFRA qualifying, no limitation may be placed on the employee's option to substitute accrued vacation, accrued annual leave, or accrued personal leave for unpaid leave, regardless of any leave usage restriction in place.

Applying FMLA/CFRA leave with other leaves

1. Non-Industrial Disability Leave (NDI) **will** run concurrently with FMLA/CFRA leave. Pregnancy Disability Leave (PDL) **will** run concurrently with only FMLA leave.
2. Twelve (12) weeks of FMLA/CFRA leave will be available to eligible employees who exhaust Industrial Disability Leave (IDL) or Temporary Disability (TD). Pending State Compensation Insurance Fund's acceptance of an employee's claim of a job-related injury, the Department will provisionally count any unpaid/paid leave taken for that injury against an employee's twelve (12) workweeks of FMLA/CFRA leave.

Payment of benefits during unpaid FMLA/CFRA leave

During an unpaid FMLA/CFRA leave, the Department will pay the entire premiums of an employee's health, dental, and vision benefits. When the employee returns to work, an accounts receivable will be established to recover the employee's portion of the premiums. An employee who currently receives the "cash option" (in lieu of health benefits) under the State's Flex-Elect program will not receive the "cash option" during an FMLA/CFRA leave.

The Department shall collect the entire cost of the premium if the employee returns to work for less than thirty (30) calendar days, or if the employee chooses not to return to work upon expiration of the FMLA/CFRA leave.

The Department shall NOT collect the entire cost of the premium, if the employee retires during the first thirty (30) calendar days after returning to work, or upon the continuance, or onset of a serious health condition affecting the employee, or family member, which would otherwise entitle the employee to FMLA/CFRA leave, or any circumstances beyond the control of the employee.

PROCEDURES

Employee

General information: Any request for an FMLA/CFRA leave must be submitted at least thirty (30) days in advance when the need for a leave is foreseeable. Failure to provide such notice may be grounds for denial of a leave request. When an advance notice is not possible, or the need for the leave cannot be foreseen, the employee must give his/her immediate supervisor timely verbal notice, as soon as practical. If the employee wants a leave counted as FMLA/CFRA leave retroactively, the employee must notify the supervisor **within two (2) business days after returning to work** that the leave was for an FMLA/CFRA reason. The employee must submit a *Notice-Request FMLA/CFRA Leave* (Appendix D) as soon thereafter as possible.

Medical certification *FMLA/CFRA Med-Cert* (Appendix C) is required for **unpaid** FMLA/CFRA leave. Medical certification *FMLA/CFRA Med-Cert* (Appendix C) is required when an employee uses **paid** accrued leave; e.g., annual leave, personal leave, sick leave, and vacation, under the guidelines of the FMLA/CFRA. Medical certification must be provided to the Department within fifteen (15) days of the request for leave, unless not practical to do so. Failure to provide this certification within fifteen (15) days of the leave request may result in denial of the request until such certification is provided to the Department.

Record paid/or unpaid FMLA/CFRA Leave in the Project Accounting and Leave System (PAL). A listing of PAL FMLA/CFRA leave aliases is found in Appendix E.

Employee's own serious medical condition: Employees must either verbally inform their immediate supervisor of their own serious medical condition and need for leave or give to that supervisor a completed *Notice-Request FMLA/CFRA Leave* (Appendix D). Medical certification is required. The *FMLA/CFRA Med-Cert* (Appendix C) need not, but may, at the employee's option, identify the serious health condition involved. It shall contain:

1. The date, if known, on which the serious health condition commenced;
2. The probable duration of the condition; and,
3. A statement that due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his/her position identified in his/her duty statement.

PROCEDURES

Employee (cont.)

Care for family member/birth/adoption/foster care placement:

Medical certification is required. Employees must either verbally inform their immediate supervisor of their need for leave or give to that supervisor a completed *Notice-Request FMLA/CFRA Leave* (Appendix D) for one or more of the following conditions:

1. To take a leave for the birth of a child or adoption or foster care placement of a child. Medical confirmation *FMLA/CFRA Med-Cert* (Appendix C) or other applicable document verification must be provided.
 2. To take a leave to care for an immediate family member (spouse, child, or parent) with a serious health condition. The medical certification *FMLA/CFRA Med-Cert* (Appendix C) need not identify the serious health condition involved but shall contain:
 - The date, if known, on which the serious health condition commenced;
 - The probable duration of the condition;
 - An estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent or spouse; and,
 - A statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent or spouse. "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort and arranging "third party care" for the child, parent, or spouse as well as directly providing, or participating in, the medical care.
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PROCEDURES

Supervisor

General Information: Review *CHECKLIST FOR SUPERVISORS* (Appendix B) to ensure that the FMLA regulations are being applied correctly.

1. Verify the employee's eligibility for FMLA/CFRA leave with the attendance clerk. The attendance clerk will contact the assigned Personnel Services Specialist I (PSS I) in the Office of Human Resources (OHR) for verification of the employee's eligibility.
2. If eligible, grant the employee's request for an FMLA/CFRA leave for up to twelve (12) workweeks.
3. **All requests for FMLA/CFRA leaves must be processed and responded to no later than two (2) business days after the request is made.** An employee shall receive a response (*Notice-Request FMLA/CFRA Leave* (Appendix D)) in writing whether the request has been approved or denied. Included with the written response shall be copies of *YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993* and *THE FAMILY AND MEDICAL LEAVE ACT OF 1993 FACT SHEET* (Appendix G and F respectively).
4. An employee does not need to expressly assert FMLA/CFRA rights. Supervisors must inform employees of their FMLA/CFRA rights when an employee states that leave is needed for any reason that would qualify under the FMLA/CFRA. The supervisor should inquire further of the employee or an employee's spokesperson to ascertain whether the leave is FMLA/CFRA qualifying.
5. If possible, determine from the employee, in advance, if any absence should be counted as part of an employee's FMLA/CFRA benefit. In order for a leave to be counted against an employee's twelve (12) workweek entitlement, the employee must normally be notified in advance that the leave will be counted as such before the leave is over. Please refer to page ten (10) for exceptions to this advance notification requirement.
6. In **ALL** cases, it is up to the supervisor to designate leave, that may be FMLA/CFRA qualifying, as FMLA/CFRA leave, whether the employee requests it or not.
7. The supervisor will make a provisional designation of FMLA/CFRA leave pending receipt of either the completed *FMLA/CFRA Med-Cert* (Appendix C) or the results of a second or third medical opinion.

PROCEDURES

- Supervisor (cont.)** **Supervisor has received advance notification:** When the supervisor has received advance notification from an eligible employee about the need to take FMLA/CFRA leave, and after consulting with the Attendance Clerk, and if necessary their PSS I or Personnel Analyst, the supervisor shall do the following:
1. Discuss the terms of the FMLA/CFRA leave with the employee. This discussion should include the beginning and ending dates of the leave.
 2. Advise the employee of his or her rights, responsibilities, and that he or she may be required to reimburse the department for benefit payments, in certain circumstances, if the employee fails to return to work after an FMLA/CFRA leave.
 3. Advise the employee of the effect of this leave on health benefits, salary increases, and health benefits for intermittent and part-time employees. Reduction in actual hours worked could mean intermittent and part-time employees no longer qualify for health, dental and vision benefits.
 4. Confirm the discussion of the terms of the FMLA/CFRA leave in writing; i.e., employee and supervisor sign *Notice-Request FMLA/CFRA Leave* (Appendix D)
 5. Give the employee the *FMLA/CFRA Med-Cert* (Appendix C) for her/his doctor to complete and copies of both *YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993* and *THE FAMILY AND MEDICAL LEAVE ACT OF 1993 FACT SHEET* (Appendix G and F respectively).

Supervisor has not received advance notification: A leave may not be counted against an employee's twelve (12) workweek entitlement after an employee returns to work *except* when:

The supervisor did not know the reason for the absence until the employee returned to work; e.g., the employee was absent for only a brief period. The supervisor may promptly, **within two (2) business days of the employee's return to work**, count the leave as FMLA/CFRA leave retroactively. (the employee may also ask that leave be retroactively counted, see page 7). In both instances the supervisor must provide the employee with the *Notice-Request FMLA/CFRA Leave*, and the *FMLA/CFRA Med-Cert* (Appendix D and C respectively) for her/his doctor to complete, and copies of both *YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993* and *THE FAMILY AND MEDICAL LEAVE ACT OF 1993 FACT SHEET* (Appendix G and F respectively).

PROCEDURES

- Attendance Clerk**
1. If requested, assist supervisors in determination of FMLA/CFRA leave eligibility. The PSS I at the OHR must make this determination. All FMLA/CFRA related forms should be processed and sent **as soon as possible** to your assigned Personnel Services Specialist.
 2. For employees on NDI/PDL, send a copy of the completed *Notice-Request FMLA/CFRA Leave* (Appendix D) to the employee's assigned PSS II in the OHR Disability Unit.
 3. If the employee does not have access to the Project Accounting and Leave System (PAL) or in the employee's absence, record paid/or unpaid FMLA/CFRA Leave in PAL.
 4. Follow the *ABMS DGS FAMILY MEDICAL LEAVE USAGE REPORT INSTRUCTIONS* (Appendix A) to make sure that the employee does not overuse their FMLA/CFRA leave.

**Personnel
Transactions**

1. The PSS I will respond immediately to all FMLA/CFRA eligibility requests by verifying in PAL the employee's eligibility for such leave. Print copies of this verification. These copies shall be stored in the FMLA/ CFRA medical file in the Office of Human Resources (OHR).
2. The PSS I will follow the *ABMS DGS FAMILY MEDICAL LEAVE USAGE REPORT INSTRUCTIONS* (Appendix A) to make sure that the employee does not over use their FMLA/CFRA leave. At the conclusion of the FMLA/CFRA leave; print a report of FMLA/CFRA leave usage. A copy of this report shall be stored in the FMLA/ CFRA medical file in the Office of Human Resources (OHR).
3. After receiving Employment Development Department notification of an employee's approval for NDI/PDL, the PSS II will request a copy from the attendance clerk of the completed *Notice-Request FMLA/CFRA Leave* (Appendix D), if one has not already been received.
4. Process personnel transactions in accordance with instructions provided by the State Controller's Office.
5. Maintain records in accordance with U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division's requirement for future audits. This includes payroll data, all notices given to the employee, records of premium payments, and records of any disagreements on the designation of a leave as FMLA/CFRA. All forms and medical certifications related to FMLA/CFRA are to be kept in the FMLA/CFRA medical file in the OHR.

PROCEDURES

Personnel Analyst	<p>Provide assistance to all requests for help on FMLA/CFRA matters.</p> <p>Option letters: Determine FMLA/CFRA eligibility or ineligibility if it has not been determined at an earlier date. The PSS I shall do the verification. All option letters must contain information regarding such eligibility or ineligibility and include copies of <i>YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993</i> and <i>THE FAMILY AND MEDICAL LEAVE ACT OF 1993</i> (Appendix G and F respectively).</p>
Performance Enhancement	<p>AWOL letter: Determine FMLA/CFRA eligibility or ineligibility if it has not been determined at an earlier date. The PSS I shall do the verification. All AWOL letters must contain information regarding such eligibility or ineligibility and include copies of <i>YOUR RIGHTS UNDER THE FAMILY MEDICAL LEAVE ACT OF 1993</i> and <i>THE FAMILY AND MEDICAL LEAVE ACT OF 1993</i> (Appendix G and F respectively).</p>

REQUIREMENTS FOR POSTING NOTICES

"YOUR RIGHTS" POSTER	<p>FMLA/CFRA requires that <i>YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993</i> (APPENDIX G) be posted in a conspicuous place in every office. Please make copies from the one attached to this policy. Poster quality copies can be obtained by contacting the nearest office of the Wage and Hour Division of the U.S. Department of Labor.</p>
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DISCRIMINATION

Who to contact

If an employee believes he or she has been interfered with, restrained, or denied the exercise of any right provided by this FMLA/CFRA policy, or if an employee is discharged or discriminated against for opposing any practice, or because of involvement in any proceeding related to the policy, the employee may contact the U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division, and may also file a civil action. An employee may also contact or his/her private attorney, union or whomever else the employee might consult about job/health/legal problems. Each employee will have to determine for him/herself, which contact works best for him or her.

If an employee believes a discriminatory pattern of behavior has been demonstrated in the administration of this policy, the employee may contact the Department's Equal Employment Opportunity Office, the Department of Fair Employment and Housing or the federal Equal Employment Opportunity Commission (EEOC). The departmental discrimination complaint process is the formal mechanism for such disputes arising out of the administration of this policy.

APPENDIX LIST

- A. ABMS DGS FAMILY AND MEDICAL LEAVE USAGE REPORT INSTRUCTIONS
- B. CHECKLIST FOR SUPERVISORS
- C. FMLA/CFRA MED-CERT
- D. NOTICE REQUEST FMLA/CFRA LEAVE
- E. PAL FMLA/CFRA LEAVE ALIASES
- F. THE FAMILY AND MEDICAL LEAVE ACT OF 1993
- G. YOUR RIGHTS POSTER

APPENDIX A

ABMS DGS FAMILY MEDICAL LEAVE USAGE REPORT INSTRUCTIONS

1. Click once on the Oracle icon.
2. Enter your username and password and, if given the option, select your 'HR' responsibility.
3. On the Navigator Menu, <OPEN> or <DOUBLE CLICK> on 'Submit Reports'.
4. With your cursor in the 'Name' field, click on the List of Values (in the tool bar) or press F9 and select, DGS Family Medical Leave Usage Report, click on OK.
5. Enter the Employees Name (i.e., SMITH, JOHN A) or select the employee's name from the list of values.
6. Enter the Report Date From (i.e., 01-JAN-1999).
7. Enter the Report Date To (i.e., 28-FEB-1999).
8. Click on OK.
9. Select the number of copies to print from the Print Options field and the printer, if it is not already defaulted to your local printer. You can select the correct printer by selecting from the list of values. Click on the Submit button.

To check the status of the report, open the Help menu on the tool bar and select View My Requests from the drop down list. A screen will appear that lists all of the reports you have requested and their individual status. Once the Phase column shows a completed status, the report has printed. This may take several minutes, depending on the volume of report requests.

The screenshot shows the Oracle 'Submit Requests' dialog box. The 'Type' is set to 'Request' and the 'Name' is 'DGS Family Medical Leave Report'. A 'Parameters' sub-dialog is open, showing fields for 'Employee Name', 'Report Date From', and 'Report Date To'. The 'Print Options' section is also visible.

Submit Requests	
Type	Request
Name	DGS Family Medical Leave Report
Parameters	
Print Options	
Parameters	
Employee Name	
Report Date From	
Report Date To	
Clear Cancel OK	

APPENDIX B

**FAMILY AND MEDICAL LEAVE ACT
AND
CALIFORNIA FAMILY RIGHTS ACT**

CHECKLIST FOR SUPERVISORS

Listed below are the most common mistakes made by employers implementing the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). The number of the corresponding FMLA/CFRA regulation follows each example. All supervisors should review the following list to ensure that they are correctly applying the FMLA/CFRA.

- *Failure to notify employee of FMLA/CFRA rights.* In all instances it is the employer's responsibility to notice the employee and inform them of the FMLA/CFRA benefits, whether or not the employee requests FMLA/CFRA. 825.300-.301
- *Failure to notify an employee that FMLA/CFRA leave will be counted towards their twelve (12) workweeks entitlement.* If the employer does not properly notice and designate, within two (2) days, the employee's absence as FMLA/CFRA, then the leave is not FMLA/CFRA, and cannot be counted against the twelve (12) workweeks entitlement. Additionally, an employee cannot choose not to have FMLA/CFRA qualified leave designated against their unpaid twelve (12) workweek entitlement. 825.208 et.seq.
- *Taking disciplinary action (due to absenteeism) against an employee with an absence that would qualify under the FMLA/CFRA.* 825.220 et.seq.
- *Failure to grant leave to provide physical care or psychological comfort to a seriously ill child, spouse, or parent.* 825.116 et.seq.
- *Failure to reinstate an employee to the same or equivalent position, including the same shift.* 825.214-.215
- *Terminating an employee during or at the conclusion of an FMLA/CFRA leave.* 825.216
- *Failure to grant FMLA/CFRA leave because of a misunderstanding of what qualifies as a "serious health condition", especially "chronic health conditions".* 825.114
- *Asking for "diagnosis" on the Medical Certification Form.* This is prohibited by the CFRA. 7292.0 et.seq. 7297.0 et.seq. and 7297.11
- *Failure to request a medical certification in writing and not giving an employee at least fifteen (15) days to obtain medical certification.* 825.305

FMLA/CFRA MED-CERT
 Certification of Health
 Care Provider
 (Family and Medical Leave Act of 1993)

U. S. Department of Labor
 Employment Standards Administration
 Wage and Hour Division

1. Employee's Name	2. Patient's Name (if different from employee)
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3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.

(1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____ or None of the Above _____

4. a. State the approximate **date** the condition commenced, and the probable **duration** of the condition (and also the probable duration of the patient's present **incapacity** if different):

b. Will it be necessary for the employee to work only **intermittently or to work on a less than full schedule** as a result of the condition (including for treatment described in Item 5 below)?

If yes, give the probable duration: _____

c. If the condition is a **chronic condition** (condition #4) or **pregnancy**, state whether the patient is presently incapacitated² and the likely duration and frequency of **episodes of incapacity**²:

5. a. If additional **treatments** will be required for the condition, provide an estimate of the probable number of such treatments:

If the patient will be absent from work or other daily activities because of **treatment** on an **intermittent or part-time** basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment, if known, and period required for recovery, if any:

b. If any of these treatments will be provided by **another provider of health services** (e.g., physical therapist), please state the nature of the treatments:

c. **If a regimen of continuing treatment** by the patient is required under your supervision, please indicate the estimated number of doctor's visits, and/or estimated duration of medical treatment, either by the health care practitioner or another provider of health services, upon referral from the health care provider.

¹Here and elsewhere on this form, the information sought relates **only** to the condition for which the employee is taking FMLA leave.

²"**Incapacity**" for purposes of FMLA is defined to mean inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

-
6. a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition, is the **employee unable to perform work of any kind**? _____
- b. If able to perform some work, is the **employee unable to perform any one or more of the essential functions of the employee's job** (the employee or the employer should supply you with information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform: _____
- c. If neither a. nor b. applies, is it necessary for the employee to be **absent from work for treatment**? _____
-

7. a. If leave is required to **care for a family member** of the employee with a serious health condition, **does the patient require assistance** for basic medical or personal needs or safety, or for transportation? _____
- b. If no, **would** the employee's presence to provide **psychological comfort** be beneficial to the patient or assist in the patient's recovery? _____
- c. If the **patient** will need care only **intermittently** or on a part-time basis, please indicate the probable duration of this need: _____
-

(Signature of Health Care Provider)

(Type of Practice)

(Address)

(Telephone number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

(Employee Signature)

(Date)

A “**Serious Health Condition**” means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

- (a) A period of incapacity² of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity² relating to the same condition), that also involves
 - (1) **Treatment³ two or more times** by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (2) **Treatment** by a health care provider on **at least one occasion** which results in **a regimen of continuing treatment⁴** under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to **pregnancy**, or for **prenatal care**.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

- (1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
- (2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and
- (3) May cause **episodic** rather than a continuing period of incapacity² (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-Term Conditions Requiring Supervision

A period of **incapacity²** which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must **be under the continuous supervision of, but need not be receiving active treatment by, a health care provider**. Examples include Alzheimer’s, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, **or** for a condition **that would likely result in a period of incapacity² of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

³ Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bedrest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

APPENDIX D

DEPARTMENT OF GENERAL SERVICES

Notice-Request Family and Medical Leave Act/California Family Rights Act (FMLA/CFRA) Leave

Attendance Clerk Route completed form to your Personnel Transaction Specialist

Notice-Supervisor complete lines 1,3,4,5, and 6	Request-Employee complete lines 2,4,5, and 6
---	--

1. Supervisor notice employee of designation of FMLA/CFRA LEAVE
Date _____
2. Employee request FMLA/CFRA LEAVE
Date _____
3. Supervisor response to employee request
Date _____
4. Employee Name _____
5. Employee Position Number _____
6. Employee Social Security Number _____ providing this number is voluntary in accordance with the Privacy Act of 1974 (PS93-579)

THE DEPARTMENT ALLOWS ELIGIBLE EMPLOYEES TO TAKE UP TO TWELVE (12) WORKWEEKS OF PAID/UNPAID FMLA/CFRA LEAVE DUE TO:
Notice-Supervisor complete, Request-Employee complete

- _____ The birth of the employee's child, or the placement of a child with the employee for adoption or foster care;
- _____ A serious health condition that makes employee unable to perform the essential functions of his or her job;
- _____ A serious health condition affecting the employee's spouse,
- _____ child,
- _____ parent, for which the employee is needed to provide care.

Employee Eligibility Supervisor complete

Employee is eligible, Notice-Request-for FMLA/CFRA leave is provisionally granted

Employee is not eligible, Request for FMLA/CFRA leave is denied _____
Reason for denial

LEAVE REQUEST DATES Notice-Supervisor complete, Request-Employee complete
--

_____ FMLA/CFRA leave beginning date
 _____ FMLA/CFRA leave ending date
 _____ FMLA/CFRA incremental or reduced schedule
 _____ Total unpaid FMLA/CFRA leave requested
 _____ Total paid FMLA/CFRA leave requested

PAYMENT OF BENEFITS DURING UNPAID FMLA/CFRA LEAVE
--

Notice-Supervisor complete, Request-Employee complete

_____ Health Plan
 _____ Dental Plan
 _____ Vision Plan
 _____ No continuation of benefits is requested
 _____ I understand that by electing to continue these benefits during my unpaid FMLA/CFRA leave, I am assuming responsibility for the agency collection accounts receivable that will be established to pay for any portion of premium payments normally paid by me to maintain such coverage. I further acknowledge that should I fail to return to work or return to work for less than thirty (30) days, following my FMLA/CFRA leave, for a reason other than (1) the continuation, recurrence, or the onset of a serious health condition, affecting either myself or eligible family member, which would otherwise entitle me to FMLA/CFRA leave; (2) retirement, (3) or other circumstances beyond my control, I may be required to reimburse the Department for its share of health insurance premiums paid during my FMLA/CFRA leave.

WHEN EMPLOYEES WILL BE REQUIRED TO PROVIDE MEDICAL INFORMATION

Supervisor check applicable line on items 1-5

1. The Department will allow eligible employees who have a qualified FMLA/CFRA reason to use up to twelve (12) workweeks of paid accrued leave, e.g. annual, personal leave, sick leave and vacation, under the guidelines of the FMLA/CFRA. Until such certification is provided, the paid leave will be provisionally counted as FMLA/CFRA leave. Employees must provide medical certification (*FMLA/CFRA Med-Cert*) from their health provider within fifteen (15) days of the leave request. Failure to provide this certification within fifteen (15) days of the leave request may result in the employee being unable to use accrued leave under the guidelines of the FMLA/CFRA.
Must provide _____ Non-applicable _____
2. The Department will allow eligible employees who have a qualified FMLA/CFRA reason, to use up to twelve (12) workweeks of unpaid job-protected leave with employer-paid health, dental, and vision benefits. Employees must provide medical certification (*FMLA/CFRA Med-Cert*) from their health care provider within fifteen days. Until such certification is provided, the unpaid leave will be provisionally counted as FMLA/CFRA leave. Failure to provide this certification within fifteen (15) days of the leave request may result in denial of the FMLA/CFRA leave.
Must provide _____ Non-applicable _____

APPENDIX D

3. The Department may, at its expense, obtain a second medical opinion of the employee's medical certification. If the first and second opinions differ, the Department may, at its expense, obtain a third opinion from a health care provider jointly selected by the employee and employer. The third opinion is binding. Upon request of the employee, the Department will furnish the employee with copies of any additional medical opinions. The Department will reimburse employees for out-of-pocket travel expenses incurred to obtain second or third opinions.

Must provide _____ Non-applicable _____

4. If an employee requests additional time beyond that which was originally estimated for the employee's FMLA/CFRA leave, re-certification may be required. Re-certification may also be required if the Department receives information that causes it to question the stated reason for the absence. Failure to submit required re-certification may result in termination of the leave. No second or third opinion will be allowed on re-certifications.

Must provide _____ Non-applicable _____

5. When the employee returns to work at the conclusion of FMLA/CFRA leave taken for their own serious illness, they will be required to furnish their supervisor with a note from their health care provider releasing the employee to work. No second or third opinion will be allowed on releases to resume work. However, a health care provider employed by the Department may contact the employee's health care provider, with the employee's permission, for purposes of clarification of the employee's fitness to return to work. The employee's return to work will not be delayed by this contact.

Must provide _____ Non-applicable _____

Periodic Reporting of Condition Supervisor check applicable line
--

Employees on a FMLA/CFRA leave that does not have a stated amount of time, may be asked to periodically, no more often than every thirty (30) days, report on their status and intent to return to work.

Must provide _____ Non-applicable _____

Employee's Signature

Date

Supervisor's Signature

Date

(Employee's signature not required)

PROJECT ACCOUNTING AND LEAVE SYSTEM (PAL) FMLA/CFRA ALIASES

ALIAS	ALIAS DESCRIPTION
AL-S-FMLA	Annual Leave In Lieu of Sick – FMLA
AL-SF-FMLA	Annual Leave In Lieu of Family Sick – FMLA
ALX-FMLA	Annual Leave Pending WC Benefits – FMLA
ITO-S-FMLA	Holiday Informal Time Off In Lieu of Sick – FMLA
ITO-SF-FMLA	Holiday Informal Time Off In Lieu of Family Sick – FMLA
ITOX-FMLA	Holiday Informal Time Off Pending WC Benefits – FMLA
L-FMLA	Informal Leave Granted – FMLA
LX-FMLA	Dock Pending WC Benefits – FMLA
PH-S-FMLA	Personal Holiday In Lieu of Sick – FMLA
PH-SF-FMLA	Personal Holiday In Lieu of Family Sick – FMLA
PHX-FMLA	Personal Holiday Pending WC Benefits – FMLA
PL-S-FMLA	Personal Leave In Lieu of Sick – FMLA
PL-SF-FMLA	Personal Leave In Lieu of Family Sick – FMLA
PLX-FMLA	Personal Leave Pending WC Benefits
S-FMLA	Sick Leave – Self – FMLA
SF-FMLA	Sick Leave – Family Sick – FMLA
SX-FMLA	Sick Leave Pending WC Benefits – FMLA
TE-S-FMLA	Excess Hours In Lieu of Sick – FMLA
TE-SF-FMLA	Excess Hours in Lieu of Family Sick – FMLA
TH-S-FMLA	Holiday Credit In Lieu of Sick – FMLA
TH-SF-FMLA	Holiday Credit in Lieu of Family Sick – FMLA
THX-FMLA	Holiday Credit Pending WC Benefits
TO-S-FMLA	Compensating Time Off (CTO) In Lieu of Sick – FMLA
TO-SF-FMLA	Compensating Time Off (CTO) In Lieu of Family Sick – FMLA
TOX-FMLA	Compensating Time Off (CTO) Pending WC Benefits
V-S-FMLA	Vacation In Lieu of Sick – FMLA
V-SF-FMLA	Vacation In Lieu of Family Sick – FMLA
VX-FMLA	Vacation Pending WC Benefits

THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Fact Sheet - Information Provided by the U.S. Department Of Labor

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most Federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (GSA) was in effect on that date, FMLA became effective on the expiration date of the GSA or February 5, 1994, whichever was earlier.

FMLA entitle eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month leave or fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all;

- public agencies, including state, local and federal employers, local education agencies (schools), and
- private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce

including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

- (1) work for a covered employer;
- (2) have worked for the employer for a total of 12 months;
- (3) have worked at least 1250 hours over the previous 12 months; and
- (4) work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitle to a combined total of 12 workweeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

APPENDIX F

Under some circumstances, employees may take FMLA leave intermittently — which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

- FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees or employers may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave.

The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

"Serious health condition" means an illness, or mental injury, impairment, or physical condition that involves either

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period~ of incapacity or subsequent treatment in connection with such inpatient care; or

- Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

(1) A health condition (including treatment therefor, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:

- treatment two or more times by or under the supervision of a health care provider; or

- one treatment by a health care provider with a continuing regimen of treatment; or

(2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or

(3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or

(4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or

(5) Any absences to receive multiple treatments of restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatment for cancer).

"Health care provider" means:

- Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or

- Podiatrist, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or

- Nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; or

- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or

APPENDIX F

- any health care provider recognized by the employer or the employer's group health plan benefits manager.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for a employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and condition of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "key" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her key status as an employee in response to the notice of intent to take FMLA leave;

- notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;

- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and

- make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employers may also require employees to provide:

- medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member,
- second or third medical opinions (at the employers expense and periodic recertification; and
- periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employers operation.

APPENDIX F

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's

exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FURTHER INFORMATION

The final rule implementing FMLA is contained in the January 6, 1995, Federal Register. (An interim final rule was published in the Federal Register on June 4, 1993.) For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

Your Rights

Under The

Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

Reasons For Taking Leave:

Unpaid leave must be granted for *any* of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.

Advance Notice and Medical Certification:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts By Employers:

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information:

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

WH Publication 1420
June 1993